

Under the provisions of the Motor Vehicle Code (625 ILCS 5/3-1001), there are no exemptions available for transfers between a divorced husband and wife. (This is a GIL.)

January 6, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated December 4, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

This is in regard to the vehicle use tax for the title transfer for the above referenced automobile. I hereby request that the transfer be treated as between married persons.

I have been informed by a representative of the Illinois Secretary of State's office that, if an automobile title transfer occurs between parties who are married, the fee assessed is \$15. However, if the transfer is between former spouses, and even if the receiving party pays nothing for the transfer, the transfer is taxed (in the amount of \$165 for the above referenced vehicle) as if it were a sale between non-spouses.

As is stated in the enclosed copy of Section 8.3 of my divorce decree, this vehicle was my 'Personal Property' during and since my marriage. The decree calls for me to 'retain sole possession' (emphasis added) of the vehicle upon entry of the decree. My former spouse, PERSON, was ordered to transfer the title for the vehicle by the day of entry of the judgment on April 14, 1998. Unfortunately, he did not do so and I have just recently come into possession of the title and am able to apply for its transfer.

I have completed some research on this matter. Illinois courts have decided that the intent of the parties, not the actual date of transfer, is determinative of the date of transfer of ownership of an automobile. In Perry v. Saleda, 34 Ill. App.3d 729, 340 N.E.2d 314 (3d Dist. 1975), the court held that the failure to apply for a transfer of title until a month after sale did not change the effective date of transfer from the intended date. In County Mutual Insurance Co. v. Aetna Life & Casualty Insurance Co., 68 Ill. App.3d 764, 26 Ill. Dec. 207, 387 N.E.2d 1037 (2d Dist. 1979), the court held the date for ownership of a vehicle is determined by the intentions of the parties and not by statutory provisions governing the transfer of title. Finally, in Dan Pilson Auto Center, Inc. v. DeMarco, 156 Ill.

App.3d 617, 108 Ill. Dec. 733, 509 N.E.2d 159 (4th Dist. 1987), the court held that the intent of the parties, not the statutory requisites for title transfer, determines the date of ownership and that one can own an automobile even though the certificate of title is in the name of another. I have located no case where an Illinois court has held that the date of ownership is determined other than as specified in these decisions.

In summary, the above referenced vehicle has been solely my possession since its purchase in 1994. The divorce decree required my former spouse to transfer the title prior to dissolution of our marriage, but he did not do so. Illinois courts have decided that, now that I am able to change the title to reflect my ownership, the title transfer should be treated by the State of Illinois as a transfer between spouses and I should be assessed the \$15 marital transfer fee.

I would appreciate a prompt response to this inquiry. I am holding the title and not submitting the request for transfer to the Secretary of State's office until I hear from you.

Payment of the Vehicle Use Tax is required upon the transfer of title to a motor vehicle. This is not a sales tax. Before transferring title to a car, the tax must be paid, or evidence must be presented showing the transfer of the auto is exempt from the tax. Under the provisions of the Motor Vehicle Code (625 ILCS 5/3-1001), there are no exemptions available for transfers between a divorced husband and wife. A transfer of ownership through a divorce does not alleviate this tax.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.